

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
 :
 PLAINTIFF, : Criminal Action
 : No. 1:24-mj-00325-IDD-1
 v. :
 :
 GOKHAN GUN, : August 13, 2024
 : 2:11 p.m. - 2:55 p.m.
 DEFENDANT. :
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 :
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 :

TRANSCRIPT OF DETENTION HEARING PROCEEDINGS
BEFORE THE HONORABLE IVAN D. DAVIS,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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~~Diane Salters, B.S., CSR, RPR, RCR~~

Official Court Reporter

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1 THE COURTROOM DEPUTY: *United States of America v.*
2 *Gokhan Gun*, Case Number 24-mj-325.

3 MR. RODREGOUS: Good afternoon, Your Honor. Anthony
4 Rodregous and John Gibbs for the United States.

5 THE COURT: Good afternoon.

6 MR. BARBARI: Good afternoon, Your Honor. Rammi
7 Barbari on behalf of Mr. Gibbs, who is walking in.

8 THE COURT: Good afternoon.

9 This matter is scheduled before the Court for a joint
10 preliminary and detention hearing. Are the parties ready to
11 proceed?

12 MR. RODREGOUS: Yes, Your Honor.

13 MR. BARBARI: Yes, Your Honor, we are. What I can
14 tell the Court, just briefly, is we're going to waive the
15 preliminary hearing and just move forward on the detention
16 hearing.

17 THE COURT: All right. Has he executed a waiver?

18 MR. BARBARI: We have not, Your Honor.

19 THE COURT: Based on the representations of counsel,
20 as well as the information that's contained in the affidavit in
21 support of the criminal complaint, the Court finds that
22 probable cause exists for the allegations as set forth in the
23 complaint. The matter will be referred to the grand jury for
24 further proceedings.

25 In regards to detention, is the government intending

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1 to call any witnesses, are you proffering any evidence, or are
2 you just proceeding based on the affidavit, the complaint, and
3 the Pretrial Services Report?

4 MR. RODREGOUS: The United States would proffer two
5 pieces of evidence, Your Honor: First, that the defendant owns
6 property in Texas, that agents discovered information to
7 corroborate this fact, as well as the fact that he maintains a
8 Turkish bank account. Those are the only two facts we wish to
9 proffer, Your Honor. We would otherwise proceed in argument.

10 THE COURT: Well, you may proceed.

11 MR. RODREGOUS: Thank you, Your Honor.

12 Although pretrial release is the norm, this is not a
13 normal case. Classified material in this country is
14 safeguarded, and for good reason. It's not entrusted to
15 anybody who simply asks for it, and that is because there is a
16 very real probability that if classified material is released
17 to our adversaries, it threatens our soldiers, our diplomats,
18 our agents overseas and, quite frankly, represents a very real
19 threat to American citizens at home. And it is with this idea
20 in mind, in concert with the fact that all four factors that
21 this Court considers under the federal format, 18 U.S.C.
22 § 3142(g), all counsel detention.

23 To my first point, the nature and characteristics of
24 this offense, Defendant is charged under 18 U.S.C. § 1924,
25 which punishes the unauthorized retention of classified

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1 material. Your Honor, this isn't an instance where we have an
2 unwitting participant who makes a mistake and brings a few
3 documents home. As the complaint made clear, from May to
4 August, the defendant was engaged in the process of obtaining
5 classified material. And when encountered at his home Friday
6 morning before leaving the United States on a trip to Mexico,
7 it was discovered that he had classified material on his
8 person, in his home, and, moreover, he had a printout
9 containing his Intelligence Community *bona fides*. It seems to
10 not be an inferential leap, Your Honor, that that document
11 would be presented to an individual outside of the United
12 States for a less-than-proper purpose.

13 This charge carries a five-year statutory maximum term
14 of imprisonment. And it is also worth noting, Your Honor, that
15 the sentencing guidelines, under Part 2M, when contemplating
16 espionage and other national security offenses, have a carveout
17 for instances where Top Secret material is involved. That is
18 exactly what's at stake here.

19 THE COURT: Involved how?

20 MR. RODREGOUS: If the individual is disclosing -- so
21 let me be clear, Your Honor: Section 1924 was made a felony in
22 2018. Since that point, the guidelines have not included that
23 because of their lack of quorum. So in the guidelines, you
24 have 793 and other offenses. And so, at best, we can look to
25 other national security offenses, but each of those enumerated

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1 offenses within the guidelines have a base offense level and a
2 heightened level when Top Secret material is at stake.

3 THE COURT: So what makes this different, factually,
4 from any other charge of unauthorized removal and retention?

5 MR. RODREGOUS: Your Honor, because at this time, this
6 investigation is still ongoing.

7 THE COURT: Well, you're asking for detention now, so
8 you have to prove to the Court now that detention is the
9 appropriate course of action. So in proving to this Court that
10 it is, you must answer this Court's question: What makes this
11 different, factually, from any other individual charged with
12 unauthorized removal and retention of classified material under
13 18 U.S.C. § 1924?

14 MR. RODREGOUS: That, in this instance, when he was
15 apprehended, he had the ability and documents that could be
16 presented to another that would constitute a much more serious
17 offense.

18 THE COURT: That's every case of unauthorized removal
19 and retention, almost, because that's the only way you know
20 that they retained something without authorization, is because
21 you find it either on their person or their home. So that's
22 every case. So, factually, once again, what differentiates
23 that factually from any other defendant charged with the exact
24 same offense?

25 MR. RODREGOUS: In his possession were his

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1 Intelligence Community *bona fides*, which is a printout showing
2 what his clearance level was, Your Honor.

3 THE COURT: I think he knows what his clearance level
4 is, so what does that have to do with anything?

5 MR. RODREGOUS: Because that is what goes into my next
6 point of the strength of the case, Your Honor, in that it is a
7 very high likelihood --

8 THE COURT: Okay. Let's say this case is very strong,
9 very strong; is it a presumption case?

10 MR. RODREGOUS: It is not, Your Honor.

11 THE COURT: There's a reason for that, right?
12 Congress didn't think it was appropriate that these types of
13 cases should come with a rebuttable presumption. You seem to
14 be arguing a rebuttable presumption simply because of the
15 offense itself. Congress made clear that it did not intend for
16 a rebuttable presumption. You have not provided this Court, as
17 of yet, any information that would differentiate, factually,
18 this case from any other case that involves the same charge --

19 MR. RODREGOUS: Well, that's why --

20 THE COURT: -- so what does your extra serious
21 argument come from if his conduct, essentially, is
22 substantially identical or similar to similar charges?

23 MR. RODREGOUS: Your Honor, by the -- given that I'm
24 going to argue all four points, I believe that the Court's
25 questions will be satisfied as I get to the fourth component,

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1 which is the dangerousness that this individual reflects. And
2 I will endeavor to ensure that the question that this Court --

3 THE COURT: Well, if that's your most important point,
4 let's move it to the top of the list and argue it now.

5 MR. RODREGOUS: Absolutely, Your Honor. So it is
6 clear that the defendant unlawfully possessed classified
7 material. It's also clear who his employer was, Your Honor.
8 And in this case, Mr. Gun was employed by the Department of
9 Defense, and his day-to-day employment was at the Joint Warfare
10 Analysis Center. The mission of that center is -- and if
11 you'll bear with me, I'd like to read it for precision sake --
12 it is "to provide combatant commands, Joint Staff, and other
13 customers with effects-based analysis and precision targeting
14 options for selected networks and nodes in order to carry out
15 the national security and military strategies of the United
16 States during peace, crisis, and war."

17 Your Honor, this is the exact type of material that
18 our adversaries would love to get their hands on.

19 THE COURT: How do I know? You haven't explained to
20 me what the material was except for the fact that it's
21 classified.

22 MR. RODREGOUS: And that, unfortunately, Your Honor,
23 is a position we have to persist in given that we can't go
24 into --

25 THE COURT: But Congress --

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1 MR. RODREGOUS: -- the specifics.

2 THE COURT: -- determined it was not appropriate to
3 make it a presumption case. You seem to continue to be arguing
4 that because of the type of case, he should be detained. That
5 would be an argument of rebuttable presumption. Congress made
6 it clear that it did not intend for a rebuttable presumption to
7 apply to this type of case.

8 So, once again, what's so serious about this case
9 other than the fact that it involves classified material?
10 Because if it didn't, you wouldn't have any charge against this
11 defendant. So besides that, what is so significant about his
12 conduct -- not the information in general -- his conduct in
13 relation to said documents that would make him a serious danger
14 to the community, and not just a serious danger to the
15 community, but a danger that cannot be addressed by conditions
16 of this Court?

17 MR. RODREGOUS: Your Honor, the other fact that weighs
18 in contrast to some of the other cases is the sheer volume of
19 what Mr. Gun is alleged to possess.

20 THE COURT: I have no chart in front of me that
21 compares the volume of documents that were, I guess, acquired
22 during the search of Mr. Gun and/or his residences compared to
23 the amount of documents acquired in a search concerning any
24 other case.

25 MR. RODREGOUS: Respectfully, Your Honor, I don't

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1 believe it's the general practice that we would make a
2 comparison of the defendant --

3 THE COURT: No, but your argument is the amount of
4 documents. How do I know that the amount of documents here
5 makes this defendant more dangerous? Because I have nothing to
6 compare. Three thousand and something pages of documents, how
7 do I know that's a lot? because I have nothing to compare it
8 with. Other defendants could have been charged with 20,000
9 pages of documents, which would make Mr. Gun's retention pale
10 in comparison.

11 MR. RODREGOUS: Your Honor, I think the important
12 distinction here is it need not be a presumption nor for me to
13 present it as such --

14 THE COURT: I didn't say it had to be, but I'm still
15 trying to get from you what information about this case makes
16 it different than any other case in which the defendant is
17 charged with the exact same offense; because if not, your
18 argument then is anyone who's charged with this offense is
19 seriously dangerous, the evidence is strong against them, and,
20 therefore, they should be detained, which is a presumption
21 case.

22 MR. RODREGOUS: Your Honor, the argument is that the
23 classification of these documents being a TS represents
24 documents that have a reasonable likelihood to cause
25 exceptionally grave harm to the United States.

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1 THE COURT: If provided to a foreign actor.

2 MR. RODREGOUS: And if --

3 THE COURT: Do we have any information during this
4 investigation that Mr. Gun provided any of this documentation
5 to a foreign actor, any information that would suggest his
6 intent to provide said information to any foreign actor?

7 MR. RODREGOUS: That's the relevance of the IC
8 credential on his person, Your Honor. When he was apprehended,
9 before he was prepared to get on a flight out of the United
10 States with classified material --

11 THE COURT: No, no, that's not my question. My
12 question is: Has this investigation uncovered any
13 dissemination of this classified information from Mr. Gun to
14 any third party? Has it uncovered Mr. Gun's intent to divulge
15 or disseminate any of this information to any third party?

16 MR. RODREGOUS: Your Honor, I'm not prepared to answer
17 that question in this forum presently --

18 THE COURT: Then, to this Court's --

19 MR. RODREGOUS: -- because of the security.

20 THE COURT: -- conclusion, it's no; and, therefore,
21 your argument that it's the type of information that would is
22 quite clearly understood by this Court -- any classified
23 information is -- but that does not reach the conclusion that
24 anyone charged with the retention of classified documentation,
25 just based on the charge itself, should be detained. You have

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1 to specify the particulars about this case that make detention
2 appropriate, not the generalities.

3 MR. RODREGOUS: And that's why I have other factors to
4 illustrate to the Court --

5 THE COURT: Well, then let's --

6 MR. RODREGOUS: -- alternative reasons.

7 THE COURT: -- get to them more expeditiously.

8 MR. RODREGOUS: Got it, Your Honor.

9 As to the history and characteristics of the
10 defendant, Your Honor, when he received access to sensitive
11 compartmentalized information, he, like everyone else, executes
12 a form with the United States -- it is a 4414 -- and,
13 Your Honor, that document is an agreement between the United
14 States and an individual who is set to receive SCI material
15 that there is special trust placed in them. Your Honor, the
16 word "trust" appears in this document three times. And at the
17 tail end of the very first paragraph, it provides, quote [as
18 said]: I understand and accept that by being granted access to
19 SCI, special confidence will be placed in me by the United
20 States Government.

21 The very first factor in the history and
22 characteristics that this Court will look to under 3142(g)(3)
23 is the individual's character. And, Your Honor, it's quite
24 clear that Mr. Gun's character is a veracity for telling far
25 less than the truth. He entered into an agreement with the

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1 United States that he would properly safeguard classified
2 material. He indicated, when he was interviewed by Pretrial
3 Services, that he would never disclose classified material.
4 Your Honor, the facts do not --

5 THE COURT: And, once again, unless you have some
6 information that would suggest that he had disseminated it or
7 intended to disseminate it, how can you conclude that his
8 representation to Pretrial Services that he would never
9 disclose it is inaccurate?

10 MR. RODREGOUS: Your Honor, because safeguarding does
11 not mean distribution. Safeguarding means that it is not --

12 THE COURT: And where was it found?

13 MR. RODREGOUS: -- to be taken from a facility.

14 In his home, Your Honor, where it should not have
15 been.

16 THE COURT: And that's the only reason you have the
17 charge against him, but that doesn't make his conduct any more
18 egregious than anyone else charged with the same offense.

19 MR. RODREGOUS: Respectfully --

20 THE COURT: Everyone charged with this offense, based
21 on their position, has probably signed a nondisclosure
22 agreement. Members of NFL teams are required to sign
23 nondisclosure agreements. Much of the information they come in
24 contact with has absolutely nothing to do with harming the
25 team's performance on the field on Sunday.

~~Proceedings~~

1 MR. RODREGOUS: Respectfully, Your Honor, I think the
2 comparison of a football player to someone whose information,
3 if disclosed, can cost American lives is not --

4 THE COURT: If disclosed. If you had information that
5 suggests it was disclosed or he intended to disclose it, then
6 the severity of his conduct would be more significant in the
7 Court's viewpoint.

8 MR. RODREGOUS: I understood Your Honor --

9 THE COURT: But you do not have that. So what else
10 about this case, once again, differentiates it from the typical
11 case that involves this charge?

12 MR. RODREGOUS: See, Your Honor, the nature and
13 circumstances of this case are one of four factors, and I've
14 moved from his individual character, and that's what I've --

15 THE COURT: The only thing you said about personality
16 is that he may have a tendency to lie because, obviously, he
17 did so when he signed the nondisclosure agreement. How do you
18 know at the time he signed the nondisclosure agreement that he
19 intended to disseminate or retain, without authorization,
20 classified information? Because if he didn't, and he acquired
21 that intent at a later point in time when he signed the
22 nondisclosure agreement, he was not lying; he was telling the
23 truth.

24 MR. RODREGOUS: Your Honor, the point is not what was
25 in his head at the moment he signed it --

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1 THE COURT: What is your point?

2 MR. RODREGOUS: The point is that he was bound by that
3 agreement and he violated it.

4 THE COURT: We're bound by the law. This courtroom,
5 this courthouse exists because people violate it.

6 MR. RODREGOUS: And that's why --

7 THE COURT: That in and of itself is insufficient to
8 detain.

9 MR. RODREGOUS: And that's why it's the sum of all
10 four factors --

11 THE COURT: Well --

12 MR. RODREGOUS: -- and I'm happy to proceed.

13 THE COURT: Then move on to the next factor.

14 MR. RODREGOUS: He also lied to Pretrial Services. He
15 lied to our agents when he said --

16 THE COURT: What did he lie to Pretrial Services
17 about? Because the only thing I've heard so far is a statement
18 to Pretrial that he would never disclose classified
19 information. You have no evidence that he did, so how is that
20 statement inaccurate?

21 MR. RODREGOUS: He also failed to indicate that he --

22 THE COURT: No, no, no --

23 MR. RODREGOUS: -- owns property in Texas.

24 THE COURT: -- there's a question pending on the
25 table: How is that representation inaccurate?

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1 MR. RODREGOUS: It wasn't that he would never
2 disclose; it's that he would never take it home, Your Honor,
3 and that's --

4 THE COURT: Is that what he --

5 MR. RODREGOUS: -- exactly what he did.

6 THE COURT: -- told Pretrial Services; he would never
7 take it home?

8 MR. RODREGOUS: When he spoke --

9 THE COURT: I doubt it seriously because, generally
10 speaking, Pretrial Services does not address the offense in
11 their interview with the defendant.

12 MR. RODREGOUS: It was Pretrial Services and our
13 agents, Your Honor. To Pretrial Services, he omitted --

14 THE COURT: Oh, now it's your agents.

15 MR. RODREGOUS: -- property ownership.

16 I did say both, Your Honor. It was property ownership
17 to Pretrial Services; and when interviewed by our agents after
18 his apprehension --

19 THE COURT: What do you mean property ownership to
20 Pretrial Services?

21 MR. RODREGOUS: He was asked if he owned property,
22 Your Honor, and he did not include that he owns property in
23 Texas. And his potential third-party custodian, his long-term
24 friend in Texas indicated --

25 THE COURT: Well, I've read several things that it

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1 appears that Mr. Gun owns a lot of property.

2 MR. RODREGOUS: And Pretrial Services --

3 THE COURT: Did he divulge other property?

4 MR. RODREGOUS: He did, but --

5 THE COURT: And so is it not possible that failure to
6 disclose a Texas property was a mistake or an omission?

7 MR. RODREGOUS: Well, Your Honor, Pretrial Services --

8 THE COURT: Do you have any information in your
9 possession that the nondisclosure of the Texas property was
10 done intentionally; and if so, for what purpose?

11 MR. RODREGOUS: Your Honor, it's our conclusion, as
12 well as the conclusion of Pretrial Services, that he provided
13 conflicting information, so I'm not --

14 THE COURT: And --

15 MR. RODREGOUS: -- manifesting --

16 THE COURT: -- Pretrial Services, with said
17 information in its possession, has recommended release.

18 MR. RODREGOUS: And that's --

19 THE COURT: You can't have it both ways. You can't
20 say I agree with Pretrial Services but disagree with Pretrial
21 Services.

22 MR. RODREGOUS: Well, I can adopt -- some of their
23 conclusions may not necessarily support the final, Your Honor,
24 but I'm providing that to say that this isn't just the position
25 the United States is offering.

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1 And to the other points, he has no family ties in this
2 area. His family lives in Turkey.

3 THE COURT: And where in the statute or regulations
4 does it say that contact requires that contact to be local with
5 the court in which he is to be charged and/or prosecuted?

6 MR. RODREGOUS: Under 3142(f) -- excuse me -- (g)(3),
7 Your Honor, this Court is to consider his family ties, and it
8 seems that those ties would need to be limited to the district
9 that the Court sits because --

10 THE COURT: What do you mean "it seems"? There's no
11 such thing as "it seems" in the law. There either is law that
12 says that's the case or not. What is your position?

13 MR. RODREGOUS: Family ties --

14 THE COURT: Do you have legal authority for the
15 position that the Court should consider detention more likely
16 if an individual does not have a residence in the district in
17 which he is charged and to be prosecuted?

18 MR. RODREGOUS: The district courts in this
19 district --

20 THE COURT: Do you have any legal authority for the
21 statement just made by this Court?

22 MR. RODREGOUS: I have authority for cases decided in
23 this district where the district court found that no local ties
24 and only ties overseas were insufficient to meet that prong.

25 THE COURT: Only ties overseas. He owns property

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1 here. How is that not ties to this district?

2 MR. RODREGOUS: Because I'm discussing family ties,
3 Your Honor, not community residence or community ties, which
4 are separate inquiries, so --

5 THE COURT: So he --

6 MR. RODREGOUS: -- his family ties.

7 THE COURT: -- has no family or friends in Virginia or
8 in the United States of America?

9 MR. RODREGOUS: Respectfully, Your Honor, the statute
10 says "family ties," not friends. Everybody has friends,
11 Your Honor.

12 THE COURT: He has no family ties in the Eastern
13 District of Virginia or in the United States?

14 MR. RODREGOUS: In this district, that is correct,
15 Your Honor, he does not.

16 THE COURT: Or in the United States?

17 MR. RODREGOUS: By what we have in front of us, he has
18 no family in the United States. He has no children. He was
19 divorced in 2014, so there's no spouse to speak of, and he has
20 no ties. And as I've --

21 THE COURT: So now you have one factor that may weigh
22 in your favor.

23 MR. RODREGOUS: As to the community --

24 THE COURT: We've discussed three. You have one that
25 may be in your favor.

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1 MR. RODREGOUS: Well, you did say that the strength of
2 the case was strong, Your Honor, so I think we have two.

3 THE COURT: All right.

4 MR. RODREGOUS: As to the community ties, at which the
5 Court alludes, he has a girlfriend here, and she has indicated
6 that -- when asked if she would serve as a third-party
7 custodian, she provided her financial background and indicated
8 that she makes -- she receives a substantial sum in alimony and
9 child support from a previous marriage, but was unwilling to
10 provide her residence as collateral, and only indicated that
11 she was prepared to provide \$1,000 towards his bond.

12 THE COURT: And what does that have to do with this
13 individual and whether he presents a risk of nonappearance or
14 danger to the community, whether or not a potential third-party
15 custodian wants to possibly lose her home if he doesn't do
16 something in the future?

17 MR. RODREGOUS: Well, it's relevant, Your Honor,
18 because in this case, Pretrial is recommending -- the two run
19 together. The community tie is also the individual who would
20 serve as a custodian. And I can separate those two if the
21 Court prefers, but I think, for the sake of expediency, it
22 would be better to analyze them together. And that conclusion
23 results in an individual who is not really willing to accept
24 much risk, but be a third-party custodian. And the district
25 court here in the United States against --

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1 THE COURT: If the Court had to venture an estimate,
2 the probability is the majority of third-party custodians would
3 not prefer to offer their homes as collateral. So, once again,
4 that fact doesn't place Mr. Gun in any different position in
5 front of this Court than any other defendant, almost.

6 MR. RODREGOUS: In *United States v. Mitchell*,
7 Your Honor, a district court in this district held that a
8 custodian who doesn't incur any risk --

9 THE COURT: It doesn't make a difference. We are
10 different. We're taught to be different, who we are, and make
11 our own determinations on probable cause and detention
12 irrespective of what another judge may have done unless, of
13 course, that information or that court case is defined as
14 precedent.

15 MR. RODREGOUS: Understood, Your Honor. It is a -- I
16 note it for the fact that it is a case from a district court
17 here, and this isn't an abstract analysis from a foreign court
18 outside of this district.

19 THE COURT: And the facts of that case are
20 substantially identical to the facts of this case?

21 MR. RODREGOUS: They are in the sense for the
22 proposition of analyzing the proprietary of a third-party
23 custodian.

24 THE COURT: Not for the proposition; it has to be in
25 toto or that case makes no difference to this Court on why it

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1 should rule a certain way if even the facts of that case are
2 different, because that court, in all likelihood, based its
3 decision on all the factors required to consider as well, the
4 same way this Court is required to do so. And if the facts of
5 the case were substantially different, obviously, the
6 determinations by the two courts, it would serve to believe
7 that those decisions would be different.

8 MR. RODREGOUS: Understood, Your Honor.

9 Turning to the other component of the third-party
10 custodian, the defendant's girlfriend seems ill-suited for the
11 task for reasons --

12 THE COURT: Put her aside. So if we had any issue --
13 or the Court had any issue with that individual as a
14 third-party custodian, what's the problem with just getting
15 another third-party custodian?

16 MR. RODREGOUS: The other identified third-party
17 custodian, Your Honor, is located in Texas; and if the Court
18 was inclined to send Mr. Gun to Texas subject to that
19 custodian, he would be placing him closer to Mexico, the
20 country that the defendant was attempting to enter with
21 classified material on his person. For those reasons, that
22 custodian is inappropriate as well.

23 THE COURT: And what does -- once again, is it your
24 representation to this Court that you have some information, as
25 acquired through the investigation of these charges, that he

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1 intended to meet someone in Mexico for purposes of
2 disseminating this classified information? because, otherwise,
3 it's a trip to Mexico.

4 MR. RODREGOUS: Your Honor, the facts suggest, because
5 it's an ongoing investigation and more will certainly be
6 uncovered, an individual does not need to bring an Intelligence
7 Community credential with them.

8 THE COURT: Which could lead to the reasonable
9 inference that he didn't know it was in his bags, kind of like
10 people who get on and say, Oh, forgot the gun.

11 MR. RODREGOUS: You're right, Your Honor, if it was
12 just the credential.

13 THE COURT: So what, besides presumptions, are you
14 providing this Court to make its decision?

15 MR. RODREGOUS: It's not every day, Your Honor, that
16 somebody brings a credential and classified material on a
17 flight out of the United States.

18 THE COURT: Not every day that they're detained and
19 arrested for doing so. You have presented no evidence to this
20 Court how often people attempt to do so or how often people
21 actually succeed in doing so.

22 MR. RODREGOUS: Again, Your Honor, you're right, we
23 didn't, because our task is to --

24 THE COURT: But it's your job to prove to this Court
25 the facts that support your argument for detention. As of this

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1 point in time, you have failed in your task. Is there
2 additional information you'd like to provide the Court? because
3 your entire argument seems to be based on your position that is
4 a risk of nonappearance and a danger to the community. So be
5 it. Let's conclude he is. That's not the standard that this
6 Court is required to consider in detaining or releasing him.
7 The standard is this Court must conclude there is no
8 combination of conditions that would reasonably assure his
9 appearance and the safety of the community. So even if he is a
10 danger and a risk, he still should be released unless this
11 Court concludes that no combination of conditions will
12 reasonably -- not guaranty -- reasonably assure his appearance
13 and the safety of the community. Why wouldn't the conditions
14 set forth in the Pretrial Services Report serve that purpose?

15 MR. RODREGOUS: Because the conditions that are at
16 play here require a third-party custodian argument that has
17 been proffered and presented to this Court and show that
18 they're insufficient to overcome the flight risk; that the
19 facts of this case make clear he was attempting to flee the
20 United States with classified material.

21 THE COURT: What is this -- you can't use the word
22 "flee"; that's an assumption. He bought a ticket to go to
23 Mexico, he says, for vacation. Do you have any information in
24 your possession that suggests he was not going to Mexico for
25 vacation?

~~Proceedings~~

1 MR. RODREGOUS: Respectfully, Your Honor, you don't
2 need an Intelligence Community credential to go fishing, and
3 that's --

4 THE COURT: And did he tell someone, I was bringing my
5 intelligence credentials with me to go fishing?

6 MR. RODREGOUS: No, Your Honor.

7 THE COURT: So then why are you making the connection
8 that he himself never made?

9 MR. RODREGOUS: Because his purported explanation was
10 that he was going fishing.

11 THE COURT: He didn't say, That's why I have the
12 documents. He just said -- he wasn't explaining anything. He
13 was explaining why he was on the flight: Because I'm going
14 fishing.

15 MR. RODREGOUS: Certainly, Your Honor. And the
16 reality is his flight was scheduled to leave Friday; he was
17 scheduled to come back Wednesday; and if --

18 THE COURT: Well, if I'm fleeing, why am I coming
19 back? I get a one-way ticket.

20 MR. RODREGOUS: If his only reason for going to Mexico
21 was fishing and -- the case -- the facts in this case are
22 distinct --

23 THE COURT: No, no. What's wrong with him -- if he's
24 only going to Mexico for fishing, what's wrong with that?
25 Finish the thought.

~~Proceedings~~

1 MR. RODREGOUS: The argument that I've already made,
2 Your Honor: He doesn't need an Intelligence Community
3 credential, and he certainly --

4 THE COURT: And he didn't say he had it for that
5 purpose, so that argument fails. What else you got?

6 MR. RODREGOUS: He doesn't need classified
7 material on --

8 THE COURT: He didn't say he was bringing it to go
9 fishing. What else you got?

10 MR. RODREGOUS: He doesn't have to, Your Honor.

11 THE COURT: You're trying to say simply because he had
12 classified information, he obviously wasn't going fishing in
13 Mexico --

14 MR. RODREGOUS: I'm arguing that that's not --

15 THE COURT: -- and that's too far of a leap for this
16 Court to make.

17 MR. RODREGOUS: It's not the only thing he was going
18 to do in Mexico. And if he were fishing, then that doesn't
19 preclude him from doing other things.

20 THE COURT: What else is he doing in Mexico?

21 MR. RODREGOUS: Your Honor, I can't put myself into
22 his mind beyond --

23 THE COURT: Then you have no facts to suggest he was
24 doing anything or going to do anything in Mexico except for his
25 stated purpose, do you?

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1 MR. RODREGOUS: I have documents that --

2 THE COURT: It's your opinion as a prosecutor in this
3 case, and I wouldn't have thought you would have had any
4 different opinion.

5 MR. RODREGOUS: Well, Your Honor, the facts are what
6 dictate the result.

7 THE COURT: Exactly. And the facts so far do not
8 support your request for detention. You have any others?

9 MR. RODREGOUS: Minor Court's indulgence.

10 (Whereupon, there was a brief pause in the proceedings.)

11 THE COURT: Because from the Pretrial Services Report,
12 it appears Mr. Gun has no criminal history as well --

13 MR. RODREGOUS: The only --

14 THE COURT: -- so the danger to the community is the
15 charge itself --

16 MR. RODREGOUS: That's right, Your Honor.

17 THE COURT: -- and you don't believe that can be
18 addressed by any condition of release?

19 MR. RODREGOUS: I don't, Your Honor.

20 THE COURT: So, then, your position is that anyone
21 charged with this offense should be detained.

22 MR. RODREGOUS: It is not, Your Honor.

23 THE COURT: Then why should he?

24 MR. RODREGOUS: Because if he is released, Your Honor,
25 there are ways that he can continue to share the information

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1 that is stored in his head.

2 THE COURT: Anyone charged with this offense could do
3 the same if they still had any of it in its possession. Do you
4 have information that would suggest to this Court -- since the
5 information was seized, do you have any information that
6 suggests that your experienced, competent law enforcement
7 personnel didn't seize at all?

8 MR. RODREGOUS: Your Honor, there is --

9 THE COURT: Put it an easier way: Do you have any
10 information in your possession that suggests that Mr. Gun still
11 has any classified documents in his possession?

12 MR. RODREGOUS: Your Honor, I --

13 THE COURT: Yes or no?

14 MR. RODREGOUS: I cannot go into that because of the
15 national security implications, Your Honor, but I can say --

16 THE COURT: Then you have to take the consequences.
17 Facts are facts. The Court completely understands your ability
18 and inability to discuss certain things --

19 MR. RODREGOUS: What I can say, Your Honor --

20 THE COURT: -- but you do so at your own peril. You
21 cannot have it both ways. This Court cannot make a decision
22 based on information that you are unwilling to provide, for
23 whatever reason. This Court makes decisions based on facts,
24 not the absence of said.

25 MR. RODREGOUS: Understood, Your Honor. I guess the

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1 final point I would make in line with the Court's most recent
2 comment is that this involves documents of extremely high
3 classification, and I will end where I began: This is not a
4 situation where it's an unwitting defendant who made a mistake,
5 which was an anecdote that the Court provided --

6 THE COURT: Do you have any information -- well, let's
7 try to do it easier. There have been plenty of people who have
8 been charged with this offense who had classified information
9 just as significant, if not more significant, and were released
10 pretrial. What, once again, factually, makes this case so
11 egregious that he should also not be released, especially when
12 a big part of your argument is danger to the community and he
13 has no criminal history --

14 MR. RODREGOUS: Your Honor, it's because --

15 THE COURT: -- and you have no evidence to present to
16 this Court that he disseminated any classified information or
17 intended to do so? So, right now, you have the simple
18 possession of classified information, and you don't think
19 simple possession of classified information can be dealt with
20 with any combination of release conditions?

21 MR. RODREGOUS: Your Honor, I would oppose the simple
22 characterization given the volume in this case.

23 THE COURT: It doesn't make a difference what you
24 characterize it as; it's this Court's characterization that's
25 important.

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1 MR. RODREGOUS: Your Honor, there isn't any condition
2 that is going to prevent the defendant from speaking about what
3 he knows.

4 THE COURT: And where in the law is it required for
5 that to be presented? There are no guarantees of anything.
6 That's why the statute and the regulations say "reasonably
7 assure."

8 MR. RODREGOUS: There is a guarantee that if he is
9 detained, he will not be able to have those types of
10 conversations --

11 THE COURT: That's with every defendant.

12 MR. RODREGOUS: -- that he would be free to have if
13 released, Your Honor.

14 THE COURT: If detained, he would no longer steal
15 government property. If detained, he would no longer possess
16 child pornography. If detained, he can no longer do much of
17 anything. And, in fact, that actually isn't true because
18 experience proves that internet-capable phones have inhabited
19 incarceration facilities in the past, and probably will in the
20 future. Said access to the internet provides a means by which
21 to continue to commit the crime, so your representation was
22 inaccurate.

23 MR. RODREGOUS: It would reasonably assure Your Honor,
24 which is the standard. I didn't -- I never argued it would
25 eliminate, nor does the statute require that. It requires that

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1 it would be reasonably assured that these things would not
2 happen, and that is the way to reasonably --

3 THE COURT: So your argument is we should detain
4 everyone because detention would reasonably assure that the
5 person detained would not continue to violate the law, right?

6 MR. RODREGOUS: No, Your Honor. This is all attendant
7 to Mr. Gun, and a case-by-case basis as everyone --

8 THE COURT: But you have not specified your argument
9 concerning Mr. Gun's conduct. The only thing you've informed
10 this Court is he possessed classified information on a flight
11 to Mexico -- or before boarding the flight to Mexico. That's
12 what you've given me factually. And you're saying to this
13 Court that there is no combination of conditions of release to
14 address that.

15 MR. RODREGOUS: That is our argument, Your Honor.

16 My final point unrelated to that argument is to say
17 that the Pretrial Services Report's score calculation, the
18 United States would urge the Court to place no reliance upon it
19 because the factors that are contemplated in what composed that
20 score --

21 THE COURT: No reliance? But I thought you made it
22 clear that the Court is required to consider all factors --

23 MR. RODREGOUS: Not on the score --

24 THE COURT: -- in determining whether release or
25 detention is appropriate.

~~Proceedings~~

1 MR. RODREGOUS: Not with respect to the score tool,
2 Your Honor, which is not a 3142(g) factor. So I want to parse
3 the two. One is contained within the Pretrial Services Report;
4 the other is by statute. And the one that's within the
5 Pretrial Services Report contains a litany of factors that give
6 a potential benefit to first-time offenders that don't fully
7 capture the seriousness of the offense; and for that reason,
8 and that reason alone, on that factor, on that tool alone,
9 Your Honor, we would urge the Court to give it little, if no,
10 weight.

11 And beyond that, I have no further argument, and I
12 appreciate the Court's indulgence. Thank you.

13 MR. BARBARI: Thank you, Your Honor, and good
14 afternoon again. Rammi Barbari for Mr. Gun.

15 Judge, I would respectfully request that Your Honor
16 follow the recommendation of Pretrial and release Mr. Gun to
17 the third-party custodian and in accordance with the
18 conditions --

19 THE COURT: To what third-party custodian?

20 MR. BARBARI: To Beatrice Yazgan, Your Honor, his
21 girlfriend that lives in Reston, Virginia, and she is present
22 in the courtroom today, Your Honor.

23 And I'll tell the Court --

24 THE COURT: Now, who was the individual -- was that
25 not the individual who was going on the trip? This is the

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1 individual who said they weren't willing to put up their
2 residence?

3 MR. BARBARI: That's correct, Your Honor. And there
4 is a trip scheduled -- not -- there is a trip scheduled to, I
5 believe, New York later this week, and she is set to return
6 Sunday, and so we would not be asking for his release to that
7 third-party custodian until she returns from that trip -- we
8 understand that, Your Honor -- if Your Honor is going to
9 consider release.

10 THE COURT: And what does the Court do in the interim?

11 MR. BARBARI: Your Honor --

12 THE COURT: Because if the Court believed that a
13 third-party custodian was appropriate to reasonably assure his
14 appearance, the lack of one for those several days...

15 MR. BARBARI: We understand that, Your Honor, and I
16 understand that Pretrial is recommending he not actually be
17 released from custody until then, Your Honor. And I've
18 discussed that with Mr. Gun. And it's our understanding that
19 he would potentially be released to her residence and be
20 allowed to live with her. He understands that he may be
21 detained until that time, Your Honor.

22 And, Judge, I just wanted to touch base as well on
23 just some of the other conditions, Your Honor. Mr. Gun
24 obviously would submit to electronic monitoring and home
25 confinement, if necessary. Your Honor, there are a variety of

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1 those conditions that I think would assure the Court and
2 alleviate the Court's concerns and the government's concerns of
3 dangerousness and risk of flight. I think Your Honor, you
4 know, already pointed out he has no criminal history. He's
5 50 years old, Your Honor. He is a United States citizen,
6 although he does hold dual citizenship. My understanding is
7 that he no longer has possession of the passports, the Turkish
8 expired one nor the United States passport, as I believe they
9 were taken during the search warrant, and so he does not and
10 would not have a way to leave the country or this area.

11 THE COURT: Now, I was unclear, because it wasn't
12 mentioned in anything, whether or not Turkey authorizes dual
13 citizenship.

14 MR. BARBARI: I do not know, Your Honor.

15 THE COURT: You don't know?

16 MR. BARBARI: I do not know. I could ask Mr. Gun if
17 he knows if he has current Turkey citizenship if Your Honor --

18 THE COURT: Well, it appeared, based on the
19 information in the Court's possession --

20 MR. BARBARI: Yes, Your Honor.

21 THE COURT: -- he was unclear; that's why I was asking
22 counsel.

23 MR. BARBARI: Understood, Your Honor. I'm sorry, I do
24 not know the answer to that.

25 THE COURT: Understood.

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1 MR. BARBARI: And, Your Honor, he does -- the
2 government makes a point that he owns properties in Texas and
3 Florida, but as Your Honor pointed out, he does own properties
4 here in Fairfax. And I wanted to just tell the Court, in terms
5 of the ties to the community --

6 THE COURT: What is with the property in Texas? Does
7 he have a mortgage on that as well?

8 MR. BARBARI: I'm not sure if he has a mortgage on
9 that, Your Honor. I can ask him, if Your Honor would indulge.

10 (Whereupon, there was a brief pause in the proceedings.)

11 MR. BARBARI: There is a mortgage, Your Honor, and my
12 understanding is --

13 THE COURT: Which home has the most equity?

14 MR. BARBARI: I believe, from my understanding -- and
15 I can confirm with the client -- that it's the Fairfax home.

16 (Whereupon, there was a brief pause in the proceedings.)

17 MR. BARBARI: Yes, Your Honor.

18 THE COURT: Do we know approximately how much value or
19 equity is in that home?

20 MR. BARBARI: Your Honor, if I could point to the
21 Pretrial Services Report, my understanding is that there is, I
22 think, an \$80,000 mortgage left, and I believe the potential
23 value of that property, according to the Footnote 1 on page 3,
24 is about 498,000. That would put approximately 420, give or
25 take, thousand dollars in equity in that home, I believe,

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1 Your Honor.

2 THE COURT: And is your client willing to put up that
3 property as a condition of release?

4 MR. BARBARI: I have not discussed that with him,
5 Your Honor, but --

6 THE COURT: Well, now would be the time.

7 MR. BARBARI: Your Honor, Court's indulgence.

8 (Whereupon, there was a brief pause in the proceedings.)

9 MR. BARBARI: I'm told that Mr. Gun would absolutely
10 be willing to put up that property as collateral, Your Honor.

11 THE COURT: All right.

12 MR. BARBARI: And I wanted to just tell the Court I
13 did speak with several of his friends who are in the area. One
14 of the gentlemen has been a tenant of his at the Fairfax home
15 for, I think, several years, for quite some time, and has known
16 Mr. Gun in this area for the time that he's lived and worked in
17 this area.

18 And then another individual, Mr. Golden, who I spoke
19 with as well, who lives in the Ashburn Brambleton area, I've
20 arranged with him to be able to turn in any of the firearms,
21 even though, if released, he would not reside at his Falls
22 Church or Fairfax residence. He does own firearms legally and
23 understands that it's usually a condition to surrender those.
24 And I've arranged with that individual, Mr. Golden, that he
25 would be willing to take ownership and property -- not

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1 ownership, but property -- take possession -- excuse me -- of
2 those firearms in the interim and protect them so that he would
3 not have access to those as well, even though this isn't a
4 firearm case or anything like that. So I wanted the Court to
5 just be aware of that, Your Honor. So I would submit,
6 Your Honor, that he does have ties to the community.

7 And my understanding is that his sister, who I believe
8 is his only sibling, used to live in Sterling, Virginia, but
9 she passed away, I believe, two years ago from cancer. So he
10 does not have any, I believe, living siblings here in the
11 United States. And his parents do reside in Turkey, who, it's
12 clear, he did visit -- you know, has visited throughout the
13 years while he was in the states and visited them back home in
14 Turkey. So I don't believe there is any other family that
15 actually lives in the United States, as far as I know,
16 Your Honor.

17 Court's brief indulgence, Your Honor.

18 (Whereupon, there was a brief pause in the proceedings.)

19 MR. BARBARI: And so I don't want to repeat
20 everything, Your Honor. I think Your Honor pointed out a lot
21 of the issues on the factual. If Your Honor wants me to get
22 into that, I can, but --

23 THE COURT: That's fine. I think you're right, the
24 Court has covered it ad nauseam, probably.

25 MR. BARBARI: Understood, Your Honor. So I don't want

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1 to repeat that, but I would just submit that, you know, the
2 assumption the government makes, I was going to make all of
3 those arguments, that Your Honor did point out, to the Court
4 for why detention would not be appropriate, and that there are
5 a combination of conditions that would be appropriate for his
6 release into the community, Your Honor.

7 THE COURT: Thank you.

8 Based on his lack of criminal history, the lack of any
9 factual information that suggests at this -- not suggests --
10 from which this Court could conclude that Mr. Gun did anything
11 at this juncture but to have unauthorized -- or removed without
12 authority and retained classified material, the lack of any
13 criminal history, the fact that he has a third-party custodian,
14 this Court does believe there is a combination of conditions of
15 release that would reasonably assure Mr. Gun's appearance at
16 future court proceedings and the safety of the community, those
17 being the eight conditions set forth on page 6 of the Pretrial
18 Services Report, with the additional condition that he will not
19 be released until this Court has acquired documentation or
20 proof from the individual represented by defense counsel that
21 the firearms have been removed and are retained by said
22 individual outside of the homes owned by Mr. Gun.

23 Does the government believe there are any other
24 conditions of release that are appropriate?

25 MR. RODREGOUS: Yes, Your Honor. The United States

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1 would move for GPS monitoring and home confinement as
2 additional conditions.

3 THE COURT: Counsel?

4 MR. BARBARI: Your Honor, I think that the GPS
5 monitoring would be appropriate. I did represent that he would
6 be willing to do home confinement if Your Honor thought that
7 was appropriate, but I would not ask for that, Your Honor.

8 THE COURT: GPS monitoring -- home detention with GPS
9 monitoring with time-outs as directed by Probation or by
10 Pretrial Services will also be a condition of supervision.

11 MR. RODREGOUS: Your Honor, at this time, the United
12 States would move to stay the detention order, and we have a
13 proposed order for the Court as well as for defense counsel --

14 THE COURT: All right.

15 MR. RODREGOUS: -- pending appeal to the district
16 court in this case.

17 THE COURT: And the government will keep the Court
18 informed of the status of any said appeal if, obviously, that
19 information is not contained in ECF notifications.

20 MR. RODREGOUS: Absolutely, Your Honor.

21 THE COURT: Anything further?

22 MR. BARBARI: No, Your Honor.

23 MR. RODREGOUS: Nothing further, Your Honor.

24 THE COURT: It appearing nothing further, Mr. Gun is
25 remanded to the custody of the United States Marshal pending

1 further proceedings.

2
3 CERTIFICATE OF REPORTER

4 I, Diane Salters, hereby certify that the foregoing
5 transcript of proceedings was prepared from an FTR Gold audio
6 recording of proceedings in the above-entitled matter and was
7 produced to the best of my ability. Indiscernible indications
8 in the transcript indicate that the audio captured was not
9 clear enough to attest to its accuracy.

10
11 /s/ Diane Salters

12 _____
13 Diane Salters, CSR, RCR, RPR
14 Official Court Reporter
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